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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S MOTION IN LIMINE TO
PRECLUDE CHARACTER EVIDENCE
OF JAMES R. KNAPP PURSUANT TO
ARIZONA RULES OF EVIDENCE,
RULES 401, 402, AND 404.

(Oral Argument Requested)

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Motion in Limine requesting this Court preclude any evidence of James R. Knapp's reputation, behavior, proximity or other conduct the defense might seek to admit as evidence of third-party culpability.

On July 2, 2008, James R. Knapp was a tenant living in the guest house at the Bridal Path residence. Mr. Knapp, who was also a very close friend of Carol Kennedy, was the first civilian to arrive on the scene after Carol's body was discovered. Mr. Knapp provided law enforcement with a valid alibi at the time of the murder which was corroborated and was ruled out as a suspect in the murder. On January 7, 2009, six months after Carol died, Knapp committed suicide. The defense, in their 3rd Supplemental Disclosure dated April 10, 2010,

1 indicated it will seek to introduce evidence of third-party culpability and point the finger of
2 guilt towards Mr. Knapp.

3 Knapp was excluded as a suspect in this case relatively early. The alibi he provided
4 to law enforcement was verified by his son, his ex-wife, and later, his cell phone records.
5 Knapp stated he had spent the majority of the afternoon and early evening of July 2, 2008, in
6 Prescott at the home of his ex-wife with his sons, Alex and Jay. When Knapp's ex-wife
7 arrived in the late afternoon and took Jay to hockey practice, Knapp and his younger son
8 Alex stayed at the house and watched movies.
9

10 For a short time after Carol's death, Knapp continued to live in the guest house on the
11 Bridal Path property and at times had access to the main house. Knapp also made several
12 statements, some that have been found to be untrue, regarding the relationship between
13 Defendant and Carol. Simply stated, Knapp believed Defendant murdered Carol and was not
14 the least bit reluctant to share his belief to anyone who would listen.
15

16 *State v. Gibson*, 202 Ariz. 321, 44 P.3d 1001, (2002), requires that third-party
17 culpability evidence must be analyzed under *Ariz. R. Evid.*, Rules 401, 402, and 403. First,
18 the evidence must be relevant.

19 "Relevant evidence means evidence having any
20 tendency to make the existence of any fact that is of
21 consequence to the determination of the action more probable
22 or less probable than it would be without the evidence." Rule
23 401. "All relevant evidence is admissible.... Evidence which is
24 not relevant is not admissible." Rule 402. Once the evidence is
25 determined relevant, it is admissible unless "its probative value
is substantially outweighed by the danger of unfair prejudice,
confusion of the issues, or misleading the jury, or by
considerations of undue delay, waste of time, or needless
presentation of cumulative evidence." Rule 403.

26 *Id.* at 323, 44 P.3d at 1003.

1 Relying on *Winfield v. United States*, 676 A.2d 1, 4 (D.C.1996), the *Gibson* court
2 “concluded that the proper focus should be on ‘the effect the evidence has upon the
3 defendant’s culpability.’” (citation omitted.) “To be relevant, the evidence must *tend* to
4 create a reasonable doubt as to defendant’s guilt.” *Id.* at 324, 44 P.3d at 1004. Nothing in
5 Knapp’s proximity, behavior or reputation on the day of Carol’s murder or in the days and
6 weeks following meet this standard of relevancy.
7

8 As to analysis under Rule 403:

9 When applying the balancing test under Rule 403,
10 ARIZONA PRACTICE: LAW OF EVIDENCE should be
11 considered:

12 [I]t is first necessary to assess the probative value of the
13 evidence on the issue for which it is offered. The greater the
14 probative value, of course, and the more significant in the case
15 the issue to which it is addressed, the less probable that factors
16 of prejudice or confusion can substantially outweigh the value
17 of the evidence.

18 *Id.*

19 Knapp’s reputation, behavior or other conduct has no probative value, is not relevant
20 and admission of this type of evidence will only serve to confuse the issues, mislead the jury
21 and waste time. Most importantly, Knapp had an iron-clad alibi at the time of Carol’s
22 murder.

23 Regarding these factors, the *Gibson* court stated “Wigmore described them well.”

24 The notion here is that, *in attempting to dispute or*
25 *explain away the evidence thus offered, new issues will arise*
26 *as to the occurrence of the instances and the similarity of*
conditions, *new witnesses will be needed whose cross-*
examination and impeachment may lead to further issues;
and that thus the trial will be unduly prolonged, and the
multiplicity of minor issues will be such that the jury will lose
sight of the main issue, and the whole evidence will be only a
mass of confused data from which it will be difficult to extract

the kernel of controversy.

Id. (citations omitted.)

CONCLUSION:

The State acknowledges that Knapp was a trouble man who may well have been dependent on or addicted to prescription drugs. At the time of his death he had numerous prescription drugs in his system. Knapp made false statements regarding the relationship between Defendant and Carol and his involvement in the investigation of her death. Notwithstanding, the defense has failed to present any evidence other than pure speculation that Knapp *may* have somehow committed this horrendous crime as to create a reasonable doubt as to Defendant's guilt. Any evidence of Knapp's proximity, behavior, reputation or other conduct, should be precluded.

RESPECTFULLY SUBMITTED this 14th April, 2010.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: [Signature]
Joseph C. Butner
Deputy County Attorney

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COPIES of the foregoing delivered this
14th day of April, 2010 to:

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